

SB 201_FAV_ACLUMD_ANSAH.pdf

Uploaded by: Ansah, Samuela

Position: FAV



Testimony for the Senate Judicial Proceedings Committee
January 29, 2021

SB 201 Criminal Procedure - Expungement of Records – Waiting Period

SAMUELA ANSAH
PUBLIC POLICY INTERN

FAVORABLE

The ACLU of Maryland urges a favorable report on SB 201, which would alter the amount of time an individual is required to wait before seeking expungement of a police record, court record or other record maintained by the State or a political subdivision of the State from 3 years to 18 months.

Studies show that employment opportunities can reduce recidivism rates.¹ Yet, for far too many Marylanders, a criminal record—regardless of how minor the offense, can be a bar to opportunities for success. The collateral consequences reach far beyond employment—a criminal record may compromise one’s eligibility for tuition assistance and stable housing. Moreover, these collateral consequences are particularly stark for communities of color.

Criminal records exclude individuals from employment, educational opportunities, public benefits, and stable housing

The existence of a criminal record can and does create a barrier to employment for many Marylanders. More than 80 percent of U.S. employers perform criminal background checks on prospective employees.² Under current regulations, a misdemeanor conviction in Maryland may result in the denial, suspension, or revocation of myriad business licenses, including: a barber license,³ a cosmetology license,⁴ an electrician license,⁵ professional engineer license,⁶ a landscape architect license,⁷ an interior designer certificate,⁸ and countless others.

Criminal convictions also serve to exclude persons from educational opportunities. A recent study found that a majority (66%) of colleges collect criminal justice information as part of the admissions process.⁹

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

¹ See for example Nally, Lockwood, Taiping, and Knutson, *The Post-Release Employment and Recidivism Among Different Types of Offenders With A Different Level of Education: A 5-Year Follow-Up Study in Indiana* (noting that recidivist offenders were likely to be unemployed or under-educated)

² Burke, M.E., 2004 *Reference and Background Checking Survey Report: A Study by the Society for Human Resource Management, Alexandria, Va.: Society for Human Resource Management*, 2006.

³ Md. Business Occupations and Professions, Code Ann. § 4-314

⁴ Md. Business Occupations and Professions, Code Ann. § 5-314

⁵ Md. Business Occupations and Professions, Code Ann. § 6-316.

⁶ Md. Business Occupations and Professions, Code Ann. § 14-317.

⁷ Md. Business Occupations and Professions, Code Ann. § 9-310.

⁸ Md. Business Occupations and Professions, Code Ann. § 8-310.

⁹ Center for Community Alternatives—Innovative Solutions for Justice, *The Use of Criminal Records in College Admissions, Reconsidered* (available at

A criminal conviction also hinders an individual's access to stable housing and a range of public benefits. Even a misdemeanor conviction record may bar individuals from residing at certain homes,¹⁰ and exclude individuals from low-income utility payment plans¹¹ as well as food stamps.¹²

SB 201 will allow individuals with certain criminal convictions to access a broader range of services and opportunities, including but not limited to, employment, schooling, public benefits, and housing, and thereby contribute productively to the state's economy. By increasing access to this broad range of services, SB 201 can reasonably be expected to generate greater socioeconomic stability and productivity in Maryland's communities.

Criminal convictions disparately disadvantage individuals, families, and communities of color

The over-criminalization of communities of color – due in large part to the 'war on drugs'—has produced the startling result that one in three Black men born today can expect to go to prison in their lifetime, compared with one in six Latino men, and one in seventeen White men.¹³ In addition to facing higher imprisonment rates, racial minorities, once arrested, are more likely to be convicted, and once convicted, are more likely to face longer sentences than their White counterparts.¹⁴

With higher conviction rates, persons of color necessarily bear the brunt of collateral consequences stemming from criminal convictions. Exclusion from the job market, stable housing, and countless other crucial services perpetuates the cycle of imprisonment plaguing communities of color—without gainful employment and stable housing, individuals are forced to return to livelihoods of criminality.

Reducing the amount of time an individual can request for their records to be expunged reduces recidivism, the long-standing impacts and collateral damage of interacting with the legal justice system.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 201.

<http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>).

¹⁰ See for example, COMAR 35.04.01.04.

¹¹ COMAR 20.31.01.08.

¹² Md. Human Services Code Ann. § 5-601.

¹³ Saki Knafo, 1 In 3 Black Males Will Go To Prison In Their Lifetime, Report Warns (HUFFINGTON POST, Oct. 4, 2013).

¹⁴ *Id.*

SB 201 Criminal Procedure-Expungement Waiting peri

Uploaded by: Fraser, Stanford

Position: FAV



POSITION ON PROPOSED LEGISLATION

Bill: SB 0201 Criminal Procedure - Expungement of Records - Waiting Period

Position: Favorable

Date: February 4, 2021

The Office of the Public Defender supports SB 0201, which would reduce the waiting period for individuals to seek expungement in certain circumstances. As public defenders we often hold expungement clinics for our clients. We've seen firsthand how criminal convictions or merely criminal charges prevent our clients from obtaining housing, employment, and professional licenses. By reducing the waiting period for certain people in certain circumstances, this will help Marylanders suffering from collateral consequences from criminal charges.

* * *

For these reasons, the Maryland Office of the Public Defender urges a favorable report on Senate Bill 201

SB201 KTJ Crim Pro- Expungement Reduction 18mo.pdf

Uploaded by: Johnson, Korey

Position: FAV



TESTIMONY IN SUPPORT OF SB0201:

Criminal Procedure – Expungement of Records – Waiting Period

TO: Hon. William C. Smith, Chair, and Members of the Judicial Proceedings Committee

FROM: Korey T. Johnson, Esq., Senior Policy Research Analyst

DATE: February 4, 2021

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that advocates for better jobs, skills training, and wages for low-income workers and job seekers in Maryland, particularly individuals with a criminal background. We strongly support Senate Bill 201 as a means of encouraging meaningful employment due to the current structural inequities that are a result of criminal records.

A criminal record can be both the cause and consequence of poverty. An estimated 70 million Americans – nearly one in three adults – have a prior arrest record, with approximately 10,000 to 12,000 new names are added each day. Low-income workers are routinely denied employment, housing, and educational opportunities because of a criminal record. Worse yet, in the State of Maryland, a criminal record is acquired upon arrest, *whether or not a person is ever convicted of a crime*. Anything that occurs after an arrest is documented on an individual’s criminal record and, in Maryland, will remain publicly visible until the charges and dispositions are expunged.

With the rapidly expanding use of background checks, job seekers determined to be productive citizens are routinely excluded from consideration for jobs even for minor offenses that sometimes-occurred years ago. Many employers often refuse to hire applicants with criminal records; and, jobseekers with a criminal background apply for jobs for which they are well-qualified but do not have their applications even considered, even for a non-conviction record. Moreover, Maryland’s Court System allows criminal record information to be posted online. This means an individual’s criminal history is no longer strictly used for law enforcement purposes or sentencing, but hiring decisions.

Current Maryland law indicates that a court or police record may not be expunged by obliteration until three (3) years after the disposition of the charge. As such, even if a defendant was *not found guilty*, the record *remains accessible* to the public during the (3) year period. Further, as a result of the racialized criminal justice process, the current expungement waiting period disproportionately impacts communities of color, particularly in the State of Maryland. With nearly 70% of its prison population being Black, Maryland has the most extreme racial disparities for those incarcerated for long term crimes in the United States.

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

Senate Bill 201 seeks to address this by altering, from 3 years to 18 months, the amount of time that a person must wait before seeking expungement of certain records under certain circumstances. The Job Opportunities Task Force is all too familiar with the far-reaching consequences of incarceration on low-income families, toiling to eliminate employment barriers for Marylanders struggling with a criminal record. For these reasons, we urge a favorable report of Senate Bill 201.

MD Judiciary - Testimony SB 201.pdf

Uploaded by: Elalamy, Sara

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 201
Criminal Procedure – Expungement of Records – Waiting Period
DATE: January 27, 2021
(2/4)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 201. Senate Bill 201 alters the amount of time a person must wait before seeking the expungement of records.

The Judiciary opposes this bill because it would allow for expungement of records of a criminal charge before the expiration of the three-year statute of limitations for civil claims related to that charge, and without a general waiver of any such civil claims. While the time period for expungement is a legislative prerogative, the incongruity in time periods without the requirement for a general waiver of civil claims is problematic. As a result of this differential, a civil claim by the criminal defendant concerning the circumstances of their arrest, detention, or confinement could be filed even when the case has already been expunged which would mean that documentary evidence relevant to the civil case may no longer be available. This could place civil defendants in the position of not having records needed to defend themselves against such a civil claim.

cc. Hon. Obie Patterson
Judicial Council
Legislative Committee
Kelley O'Connor

MCPA-MSA_SB 201-time-frame-Expungment _Oppose.pdf

Uploaded by: Mansfield, Andrea

Position: UNF



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith Jr., Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 4, 2021

RE: **SB 201 Criminal Procedure – Expungement of Records – Waiting Period**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE** SB 201. This bill changes the waiting period in which an individual must wait to file for an expungement from 3 years to 18 months.

MCPA and MSA, while understanding the desire to provide a second chance for persons in certain circumstances, generally oppose legislation that increases the categories or timeframes for expungement because it could interfere with the necessary access to prior criminal information. In some instances, this could be a safety factor for law enforcement personnel in carrying out their official duties.

Each year, several pieces of legislation are introduced that seek to adjust the considerations and time frames under which expungement, pardons or shielding can be sought. MCPA and MSA believe such changes require participation and input from the judiciary, prosecutors and law enforcement and, rather than being dealt with in a piecemeal manner, should be addressed comprehensively in a process that involves all stakeholders and in a setting that is conducive to reasonable solutions while, at the same time, not effecting public safety.

For these reasons, MCPA and MSA **OPPOSE** SB 201 and urge an **UNFAVORABLE** Committee report.

SB 201 - Expungement of Records.pdf

Uploaded by: Shellenberger, Scott

Position: UNF

Bill Number: SB 201
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed, Requesting an Amendment

WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY, IN
OPPOSITION TO SENATE BILL 201
EXPUNGEMENT OF RECORDS – WAITING PERIOD

I write in opposition of Senate Bill 201 as drafted that will greatly shorten the amount of time one needs to wait to obtain an expungement. While I understand and support a shortening to 18 months for an expungement of an acquittal, nolle prosequi, or dismissal, I object to adding a disposition of a Stet or probation before judgement (PBJ) to this group.

In the case of a PBJ a Judge has found the Defendant guilty of a crime and as an effort to spare the Defendant a criminal record has stricken the guilty and entered a PBJ. Allowing PBJ's to be expunged after only 18 months is too soon as it could lead to crime, PBJ, 18 months to expungement to crime to PBJ to expungement. When found guilty and given the benefit of a PBJ, a Defendant should have more time to prove they are worthy of an expungement.

The same is equally true of a Stet. A Stet is not a dismissal but a placing of a case on an inactive docket. A Stet very often comes with conditions such as stay away or the payment of restitution. Allowing an expungement of a Stet after only 18 months runs counter to the law surrounding Stet's. First, a Stetted case can be reopened for any reason for one year. Importantly as regard to Senate Bill 201, a Stet case can be reopened for good cause for up to three years. Allowing for an expungement of a Stet after 18 months would run counter to this rule.

Stet's are very often used in Domestic Violence cases. If a Domestic Violence case is Stetted and a Defendant is ordered to stay away from the victim, that victim has three years or protection where she/he could reopen that Stet if there is a violation. Senate Bill 201 would defeat this very important protection.

I do not think Senate Bill 201 is necessary, but if this committee does, it should be amended to exclude PBJ's and Stet's from the 18 month time period.